

SUBCOMMITTEE NO. 4

Agenda

Michael J. Machado, Chair
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*Senate Budget and Fiscal Review Subcommittee #4 on State Administration,
General Government, Judicial and Transportation*

*February 7, 2007
1:30 p.m.
Room 4203*

Oversight of Correctional Health Care and Related Lawsuit Compliance

1. Robert Sillen, Federal Receiver
California Prison Health Care Receivership Corporation
 - General Health Care: *Plata v. Schwarzenegger*
2. Dr. Peter Farber-Szekrenyi, Director
Division of Correctional Health Care Services
California Department of Corrections and Rehabilitation
 - Mental Health Care: *Coleman v. Schwarzenegger*
 - Dental Health Care: *Perez v. Tilton*
3. Todd Jerue, Program Budget Manager
Department of Finance
 - Correctional Health Care Budget
 - Five-Year Infrastructure Plan and Correctional Health Care
4. Public Comment

Summary of Major Correctional Health Care Lawsuits

General Health Care - *Plata v. Schwarzenegger*

Lawsuit Summary. In April 2001, *Plata v. Davis* was filed in federal court contending that the California Department of Corrections and Rehabilitation (CDCR) was in violation of the Eighth (prohibits cruel and unusual punishment) and Fourteenth (right to due process and equal protection) Amendments to the United States Constitution by providing inadequate medical care to prison inmates. Some specific examples of key issues raised in the case include: (1) the lack of nationally recognized medical guidelines for managing inmates with chronic illnesses; (2) inappropriate and inconsistent medical follow-up visits; (3) inadequate number of registered nurses; and (4) poor coordination between medical and custody staff.

In January 2002, the state entered into a settlement agreement, committing to significant changes in the delivery of health care services to inmates. Generally, the settlement agreement focuses on improving inmate access to health care, as well as the quality of health care services provided in the prisons. Under the agreement, independent court-appointed medical experts monitored the implementation of the agreement, and periodically reported to the court on the state's progress in complying with the agreement.

In September 2004, the federal court issued an order finding significant deficiencies in the department's efforts to implement the terms of the settlement agreement and in June 2005, the federal court decided to appoint a Receiver to manage CDCR's health care system. The Receiver will manage CDCR's health care system until the department proves to the court that it is capable and willing to manage a constitutional health care system or contract out for a similar level of care. The current Receiver, Robert Sillen, was appointed by the federal court in February 2006.

Summary of Funding for the Settlement Agreement. In the 2002-03 Budget Act, a seven-year funding proposal was approved to implement the *Plata* settlement agreement signed by the state. So far, \$200 million has been added to CDCR's budget in the past five budget years to implement the settlement agreement.

The Governor's 2007-08 budget proposal includes \$24.6 million in additional expenditures to implement the *Plata* settlement agreement.

(The past funding listed above for the Plata settlement agreement is an estimate and may not reflect actual historical expenditures. The administration is currently in the process of gathering and refining this data.)

Summary of Funding Directed by the Receiver. The 2006-07 Budget Act also included \$100 million in unallocated health care expenditures to fund other actions directed by the Receiver. To date, the Receiver has allocated about half of the \$100 million (\$50.3 million) to implement various efforts to improve health care in the state prison system. These expenditures have

generated \$54.6 million in ongoing costs that have been built into the 2007-08 Governor's budget proposal. The following table shows what these monies have funded:

Litigation-Driven Expenditures: *Plata v. Schwarzenegger*

Expenditures Directed by the Receiver

2006-07

(Dollars in Millions)

Summary	One-Time	Ongoing
Court order to increase medical staff salaries, except for doctors	\$24.7	\$29.6
Establish 300 LVN positions	12.3	18.4
Software and services to implement the Health Care Contracts Document Management system	5.7	1.0
Receiver's operating budget	3.1	-
Establish 41 positions at San Quentin for the Receiver's project at San Quentin	3.0	3.4
Establish 16 RN positions at the Correctional Training Facility	1.2	1.9
Establish various other positions at San Quentin	0.2	0.2
Establish two nurse positions at Corcoran	0.1	0.2
Total	\$50.3	\$54.8

The administration has recently proposed an additional \$50 million in unallocated health care expenditures to be directed by the Receiver in 2006-07. This will provide the Receiver a total of \$150 million for 2006-07 to implement various efforts to improve health care in the state prison system.

The Governor's 2007-08 budget proposal includes an unallocated \$150 million for the Receiver to direct in his efforts to improve health care in the state prison system. This is in addition to the \$55 million that has been built into the base budget for ongoing actions directed by the Receiver in the current year.

Mental Health Care – *Coleman v. Schwarzenegger*

Lawsuit Summary. In June 1991, *Coleman v. Wilson* was filed in federal court contending that CDCR was in violation of the Eighth (prohibits cruel and unusual punishment) and Fourteenth (right to due process and equal protection) Amendments to the United States Constitution by providing inadequate mental health care to prison inmates. *Coleman v. Wilson* alleged that the department's mental health care system was inadequate in several areas, including intake screening, access to care, treatment, and record-keeping.

As a result, in 1994, the Federal Court ordered the department to develop a remedial plan to correct these deficiencies. The plan developed by the department is referred to as the Mental Health Services Delivery System (MHSDS). The intent of the MHSDS is to provide timely, cost-effective mental health services that optimize the level of individual functioning of seriously mentally disabled inmates and parolees in the least restrictive environment. At this time the court also appointed a Special Master to oversee the implementation of the plan. The current Special Master is J. Michael Keating Jr.

In 1997, CDCR issued a preliminary version of the MHSDS Program Guide, which established preliminary policies and procedures to provide constitutionally adequate mental health services at all CDCR institutions. This Program Guide has been amended several times since 1997 under directives by the federal court. The court has found that successful implementation of the MHSDS Program Guide will require capital improvements at many institutions. The department has developed a Mental Health Bed Plan to address the capital outlay improvements that are needed. An amended version of the Mental Health Bed Plan was released at the end of January 2007.

Summary of Past Funding for the Settlement Agreement. The Legislature has allocated \$207 million since 1995-96 to fund settlement of the *Coleman* lawsuit. The funding has supported changes outlined in the MHSDS plan and other specific court orders under the lawsuit.

At the end of the 2006 legislative session, SB 1134 (Budget) was passed to appropriate \$35.5 million to fund about 550 new positions found by the court to be needed to implement the revised MHSDS Program Guide. Included in this legislation was a provision for a workload study to justify the need for these additional positions. This study is due to the Legislature on April 1, 2007.

(The past funding listed above for the Coleman settlement is an estimate and may not reflect actual historical expenditures. The administration is currently in the process of gathering and refining this data.)

Governor's Budget. The Governor's budget includes \$77.8 million for 2007-08 to fund: (1) salary enhancements for mental health workers; (2) retrofitting of Administrative Segregation Unit Intake Cells for suicide prevention; (3) full year costs associated with the additional positions needed to implement the revised MHSDS Program Guide; and (4) full year costs to implement an Enhanced Outpatient Program at Reception Centers.

Dental Health Care – *Perez v. Tilton*

Case Summary. In December 2005, *Perez v. Hickman* was filed in federal court contending that CDCR was in violation of the Eighth amendment of the United States Constitution by providing inadequate dental care to prison inmates. Some specific examples of key issues raised in the *Perez* class-action lawsuit include: (1) inadequate numbers of dentists and dental assistants; (2) lack of proper training and supervision of staff; (3) insufficient dental equipment such as examination chairs and x-ray machines; (4) poorly organized inmate dental records; and (5) unreasonably long delays for inmates to receive dental treatment, including prisoners with dental emergencies.

The lawsuit was filed concurrently with a settlement agreement reached between the state and the plaintiffs. The agreement committed the state to implement significant changes in the delivery of dental care services to inmates. The agreement requires the department to implement a number of newly developed policies and procedures at all 33 state prisons over a six-year period, beginning with 14 prisons in July 2006. The agreement focuses on improving inmate access to dental care, as well as the quality of dental care services provided in the prisons. For example, the policies and procedures require the department to treat inmates within specified time frames according to the severity of the dental problem and set standards of care that prison dental staff must provide.

In August 2006, the federal court issued a revised order that, among other things, required a lower dental staff to inmate ratio. Currently, there are 950 inmates to one dentist and one dental assistant. The court has ordered this ratio lowered to 515 inmates. The order also directed the department to prepare a revised implementation plan for complying with the settlement agreement.

Generally, the policies and procedures modify or reiterate existing state regulations. For example, under the agreement the department is required to provide a dental examination to inmates within 90 days of arriving at an institution from a reception center and provide subsequent examinations annually for inmates over 50 years of age and biennially for inmates under 50. Title 15 of the California Code of Regulations currently requires examinations within 14 days of an inmate's arrival; current requirements for subsequent inmate dental examinations are consistent with the settlement agreement. According to the department, none of the 33 prisons currently complies with the policies and procedures.

Summary of Past Funding for the Settlement Agreement. The Legislature has allocated \$56.7 million since 2005-06 to fund settlement of the *Perez* lawsuit. The funds have been used to implement the Inmate Dental Services Program, which is the plan stipulated by the settlement agreement to bring the department into compliance with the United States Constitution.

Governor's Budget. The Governor's budget proposal includes \$87.7 million to continue to implement the Inmate Dental Services Program. These funds are to comply with the new lowered dental staff to inmate ratio and for salary enhancements for dental staff.